SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 85

UNITED STATES, APPELLANT

vs.

CHARLES JACKSON, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED APRIL 7, 1967
PROBABLE JURISDICTION NOTED MAY 29, 1967

[fol. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

v.

CHARLES JACKSON

11/16/66

Motion continued to 11/28/66 upon the condition said motion will be heard on its merits on that date.

/s/ W.H.T.
Chief Judge

MOTION TO DISMISS THE INDICTMENT—
Filed November 4, 1966

The defendant moves the court for an order directing the United States of America to dismiss the indictment against him. He claims the indictment incorporates, or purports to incorporate, the elements of a penal statute specifying a Federal Crime, Title 18, Section 1201, which statute is unconstitutional. If convicted as charged, the defendant will stand in violation of a statute which is defective in that it is a capital penal statute which fails to set up ascertainable standards of guilt. Being a statute allowing capital punishment, it is even more important that there be no ambiguity in its wording.

The element of the statute specifying "ramson or reward *or otherwise*" is patently ambiguous and indefinite. A statute so vague and indefinite as to fail to give fair notice of what acts will be punished violates an accused's

rights under procedural due process. *Winters* v. *New York*, 333 U.S. 507,1948.

The Defendant, CHARLES JACKSON

By /s/ Stephen I. Traub, Esq.
152 Temple Street
New Haven, Connecticut

[Certificate of service omitted in printing]

[fol. 6]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

JOHN ALBERT WALSH, JR., DEFENDANT

11/16/66

Motion continued to 11/28/66 upon the condition said motion will be heard on its merits on that date.

/s/ W.H.T.
Chief Judge

MOTION TO DISMISS INDICTMENT—
Filed November 4, 1966

The defendant Walsh in the above captioned case hereby moves that the court order the above indictment dismissed as it charges an offense under a statute which is uncon-

stitutionally vague, in that it fails, by use of the words "ransom or reward *or otherwise*", to notify properly a potential defendant exactly what conduct is proscribed and criminal. This, especially in a statute charging a capital offense, is constitutionally impermissible.

The Defendant JOHN A. WALSH, JR.

By: /s/ Ira B. Grudberg
JACOBS, JACOBS, JACOBS & JACOBS
207 Orange Street
New Haven, Connecticut

[Certificate of service omitted in printing]

[fol. 8]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

CHARLES JACKSON

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT—Filed November 23, 1966

On November 3, 1966, the defendant Charles Jackson moved this court to dismiss the indictment against him. This memorandum is in support of that motion.

1. *The indictment is invalid and should be quashed because the statute on which it is based puts the defendant to an unconstitutional choice, rendering it impossible for him to enter a voluntary plea of guilty or to plead not guilty without paying a heavy price.*

18 U.S.C. § 1201 authorizes the death penalty if the kidnapped person has not been liberated unharmed, and "*if the verdict of the jury shall so recommend*" (emph. supp.). The statute plainly proscribes the death penalty if the defendant pleads guilty, for there is then no jury to recommend death. See *Waley* v. *United States*, 233 F.2d 804, 806 (9th Cir. 1956). Therefore, only a defendant who insists on his right to a trial by pleading not guilty risks his life. One punishment is permissible for those who plead innocent; a lesser penalty for those who plead guilty. The statute coerces a guilty plea and imposes a price on the exercise of the Constitutional right to a jury trial. It makes impossible a truly voluntary plea to the indictment. It is therefore a deprivation of Due Process and unconstitutional on its face. If comment on a claim of privilege is unconstitutional because it "cuts down on

the [self-incrimination] privilege by making its assertion costly", as the Supreme Court held in *Griffin* v. *California*, 380 U.S. 609, 615 (1965), it is no less unconstitutional to [fol. 9] cut down on the right to a jury trial by making its exercise costly. See *United States* v. *Wiley*, 278 F. 2d 500 (7th Cir. 1960) (reversing sentence where trial judge punished defendant more harshly for standing trial than if he had plead guilty. Held: Unlawful to punish a person for standing on his right to a trial.)

2. *The indictment should be dismissed because the statute on which it is based authorizes "cruel and unusual punishment" contrary to the 8th Amendment, and violates the Due Process Clause of the Fifth Amendment.*

The statute invoked here authorizes infliction of the death penalty, upon recommendation of the jury, on anyone who unlawfully takes another person across a state line against his will, if the abducted person is not "liberated unharmed," and if the motive of the defendant was "ransom or reward or otherwise." 18 U.S.C. § 1201. Contrary to the basic doctrine of statutory interpretation, *ejusdem generis*, and in derogation of the duty to construe penal statutes narrowly, the courts have construed the term, "otherwise" to encompass not only pecuniary motives, as indicated by the specific terms which the word follows, but to comprehend any motive whatsoever. *Gooch* v. *United States*, 297 U.S. 124 (1935); *United States* v. *Martell*, 335 F.2d 764 (4th Cir. 1964). Indeed, the Supreme Court has recently said that the crime of kidnapping may be committed by one who transports another involuntarily across state lines for a *lawful* purpose. *United States* v. *Healy*, 376 U.S. 75 (1964). Moreover, there have as yet been no decisions restricting the possible scope of the vague concept, "liberated unharmed." See *Robinson* v. *United States*, 324 U.S. 282 (1944).

If the statute is thus broadly interpreted, it would authorize capital punishment for trivial offenses; a fraternity prank resulting in minor accidental injury; an unlawful arrest by law enforcement officers who take their arrestee across state lines and injure him in the process. Even if construed more narrowly, as it should be, the stat- [fol. 10] ute authorizes death for offenses which are in

essence no more than robberies. Human life need be neither taken nor seriously threatened in order to fit all conditions of the statute.

The statute therefore authorizes a penalty so grossly disproportionate to the gravity of the offense which it proscribes as to fall within the ban on "cruel and unusual punishments" and to deny due process of law.

Although decisions are rare in which grossly excessive penalties have been held constitutionally impermissible, this is due to the fact that such penalties are rarely either imposed or authorized. There are countless other crimes more serious and more harmful to society than most of the conduct covered by § 1201, in which the death penalty is withheld, *e.g.*, second degree murder (18 U.S.C. § 1111), piracy (18 U.S.C. § 1651), attempted assassination of the President (18 U.S.C. § 1751). Nonetheless, when a penalty is grossly disproportionate to the offense to which it applies, it is "cruel and unusual." *Weems* v. *United States*, 217 U.S. 349 (1909). See also, *Robinson* v. *California*, 370 U.S. 660 (1962); *Trop* v. *Dulles*, 356 U.S. 86 (1958); *Rudolph* v. *Alabama*, 375 U.S. 889-91 (1963) (Opinion of Mr. Justice Goldberg, dissenting from denial of *certiorari*). And when the penalty is so excessive as to violate "evolving standards of decency" (*Trop* v. *Dulles*, *supra*, at 101), it also violates the Fifth Amendment.

We do not contend that the death penalty cannot be imposed for kidnapping for ransom coupled with intentional, substantial bodily injury. But the statute covers much more. Neither a ransom motive or an intentionally infliction of serious injury is required, despite the fact that these were the evils at which the statute was aimed. See Fisher & Maguire, *Kidnapping and the So-Called Lindbergh Law*, 12 N.Y.U. L. Rev. 646 (1935); Bomar, *The Lindbergh Law*, 1 Law & Contemp. Prob. 435 (1934). The general class of conduct comprehended by the statute includes the trivial as well as the terrible, the miniscule as well as the momentous. As such, the statute cannot [fol. 11] stand. The only way in which the penalty can avoid offending basic civilized, standards of decency is to be narrowly interpreted, so as to require a ransom motive and willful, serious injury. If the statute is so construed,

the indictment should be dismissed for failure to state an offense, for, as appears in other motions and memoranda, the only motive properly alleged here is one to evade arrest, and the only harm alleged is rope burns inflicted, so far as appears, by the victim in attempting to free himself.

3. *The statute on which the indictment is based is void for vagueness*

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application, violates the first essential of due process . . ." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). "The terms of a penal statute . . . must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Vanzetta* v. *New Jersey*, 306 U.S. 451 (1939). The federal kidnapping statute is therefore unconstitutionally vague and indefinite.

As noted, *supra*, the Courts have read the qualification, "ransom or reward or otherwise" out of the statute. The motive of the kidnapper is irrelevant. Indeed, the failure of the prosecution to allege anything about the purpose or motive of the abduction has been held permissible. *United States* v. *Parker*, 103 F.2d 857 (3d Cir. 1939), *cert. den.*, 307 U.S. 642 (1939); *Hayes* v. *United States*, 296 F.2d 657 (8th Cir. 1961), *cert. den.*, 369 U.S. 867 (1962). We think such cases are wrong. Not only do they ignore the canon of *ejusdem generis*, the principle of strict interpretation of penal statutes, and the history of the legislation in question, they convert a petty offense into a grievous one, and give prosecutor and the jury an ocean of discretion in which to play with people's lives and freedom. A statute which makes a capital offense of a fra-
[fol. 12] ternity prank or a false arrest (see *supra*) is no statute at all; it is an abdication of legislative responsibility and a derogation of democratic principles. It leaves lives and freedom to the whims of juries and makes a mockery of the rule of law. Congress did not intend its statute to be so broad, but if, as the courts suggest, it did, then the statute is an unconstitutional effort to transfer

from elected representatives to each individual jury the power of life and death over the citizen. Such a statute not only violates the principle of legality, it is fundamentally unfair in making it impossible for one to know in advance of the jury's decision whether he has committed the crime or not.

Making motive irrelevant to the crime of kidnapping is not the only vice of the statute. The phrase "liberated unharmed" is also a citadel of impenetrable ambiguity. Yet if one guesses wrong about the meaning which will be given to the phrase, it may cost him his life. In *Robinson* v. *California*, 324 U.S. 282 (1944), where the Court rejected an argument that the phrase was unconstitutionally vague (but the Constitutional basis of the defect had apparently not been advanced) on the ground that the statute was clearly applicable to the defendant's conduct (which is not the case here), the ambiguities of the phrase were well noted by Mr. Justice Rutledge:

> "What does 'liberated unharmed' mean? . . . What act is pointed to by 'liberated'? Does it refer only to release by the kidnapper or does it include a case of rescue overcoming his will and purpose? Does it cover his abandonment of the victim in flight, leaving him perhaps gagged and bound in some lonely spot or cell, not free but no longer in the kidnapper's power? Or must he, before the pressures become too great, change his mind, exercise discretion and set the victim free before he is forced to do so?
>
> "Similarly, what is 'unharmed'? A scratch, a cut, abrasions left by removal of tape or rope, bruises, nervous shock, disturbance of digestion, all of a kind which heals or passes before 'liberation' occurs? Few kidnappings take place without harm of some kind to the victim. . . . One produces traumatic injury, from minor abrasion to death, the other nervous or mental shock of momentary or lifetime duration. How much injury, and what kind, did Congress have in mind?
>
> [fol. 13] ". . . . Whether Congress meant all injuries, slight, substantial, serious or permanent, or only some

> of these, the statute does not say and the legislative history gives no guide. The judge, or the jury, or both together not only must apply, they must determine and write the law in this respect, until at any rate this Court, equally without legislative guidance, tells them what Congress had in mind.
>
> "There are still other uncertainties. Was it the intent (1) that the kidnapper must both liberate and refrain from injuries his victim or (2) merely that he must not inflict harm, however the liberation may occur? . . . . *Id.* at 287-288 (dissenting opinion)

Mr. Justice Rutledge concluded that "the statute turns the power to impose the death penalty upon facts so vaguely defined that only judicial legislation can remedy the defect . . . . Congress' mandate in such matters must be clear; otherwise we, not Congress, decide." *Id.* at 293. We submit that the dissent in *Robinson*, which was not, it should be noted, squarely opposed by the majority's decision, is the law today. Even if it is not, however, its analysis of the phrase, "liberated unharmed" remains cogent.

The Supreme Court in *Robinson* avoided deciding the question of permissible vagueness, so its decision does not foreclose this court's conclusion that the phrase "liberated unharmed" is unconstitutionally vague. Moreover, no court anywhere, so far as our research discloses, has been asked to decide whether the phrase "ransom, or reward or otherwise" meets Constitutional requirements of clarity. We submit that it does not. We further submit that the vagueness of the one phrase, "otherwise", in its interaction with the other, "liberated unharmed", multiplies the inherent vagueness of each. One phrase alone in a penal statute might conceivably pass muster. Both in the same statute cannot. Since a penal statute is invalid unless it contains "ascertainable standards of guilt," and because "men of common intelligence cannot be required to guess at [its] meaning," *Winters* v. *New York*, 333 U.S. 507 (1948), § 1201 is unconstitutional.

For the foregoing reasons, it is respectfully urged that the court dismiss the indictment insofar as it charges a violation of 18 U.S.C. § 1201.

[fol. 14]

The Defendant, CHARLES JACKSON

By /s/ Stephen I. Traub, Esq.
152 Temple Street
New Haven, Connecticut

By /s/ Steven B. Duke, Esq.
Yale Law School
New Haven, Connecticut

[Certificate of service omitted in printing]

[fol. 16]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

v.

JOHN ALBERT WALSH, JR.

BILL OF PARTICULARS—Filed December 9, 1966

To the extent of the Government's information, the Government replies to Motion of defendant, JOHN ALBERT WALSH, JR., for Bill of Particulars as follows:

1. Evidence for the Government will show that JOHN ALBERT WALSH, JR. and his codefendants held John Joseph Grant III in order to escape arrest; as to whether John Joseph Grant III was also held for "ransom and reward", the Government has no evidentiary proof at this time.

2a. John Joseph Grant liberated himself at approximately 4:30 P.M. on September 2, 1966.

2b. in a wooded area approximately 1½ miles north of Closter Dock Road on Route 9W, near utility pole number 20250 in Alpine, New Jersey.

2c. John Joseph Grant III liberated himself.

3a. John Joseph Grant III suffered rope burns and lacerations of both of his wrists.

3b. Grant suffered the rope burns and lacerations of both wrists while his arms were being tied around a tree, and also in his efforts to liberate himself at approximately 4:30 P.M., on September 2, 1966, in Alpine, New Jersey.

3c. in a wooded area approximately 1½ miles north of Closter Dock Road on Route 9W, near utility pole number 20250 in Alpine, New Jersey.

[fol. 17] 3d. Charles Jackson tied Grant's arms around a tree with a rope.

UNITED STATES OF AMERICA

JON. O. NEWMAN
United States Attorney

By: /s/ Robert D. Glass
Assistant United States
Attorney

[Certificate of service omitted in printing]

[fol.18]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

CHARLES JACKSON, also known as "Batman", also known as "Butch"; GLENN WALTER ALEXANDER DE LA MOTTE; and JOHN ALBERT WALSH, JR.

APPEARANCES

JON O. NEWMAN, U. S. Atty., Hartford, Conn., SAMUEL J. HEYMAN, Asst. U. S. Atty., New Haven, Conn., and ROBERT D. GLASS, Asst. U. S. Atty., New Haven, Conn., for the United States.

STEPHEN I. TRAUB, of LYNCH & TRAUB, New Haven, Conn., and STEVEN B. DUKE, Yale Law School, New Haven, Conn., court-appointed counsel for defendant Jackson.

IRA B. GRUDBERG, of JACOBS, JACOBS, JACOBS & JACOBS, New Haven, Conn., for defendant Walsh.

ARNOLD M. STEIN, of STEIN & EINHORN, Denville, N. J., and RAYMOND A. BROWN, Jersey City, N. J., for defendant De La Motte.

MEMORANDUM OF DECISION, ORDER AND JUDGMENT GRANTING DEFENDANTS' MOTIONS TO DISMISS COUNT ONE OF INDICTMENT—January 9, 1967

Defendants' motions to dismiss count one of the indictment, pursuant to Rule 12, Fed. R. Crim. P., made before entry of pleas, present what the Court believes to be a substantial question as to whether 18 U.S.C. § 1201(a), a part of the Federal Kidnaping Act, is unconstitutional.

[fol. 19] to the extent that it impairs defendants' free exercise of their Sixth Amendment right to trial by jury.

The Court holds that the section of the statute here applicable to defendants who are about to be put to plea thereunder does violate their Sixth Amendment right. Accordingly, defendants' motions to dismiss count one of the indictment are granted, subject to the stay of proceedings hereinafter provided to permit the United States to appeal directly to the Supreme Court of the United States.

INDICTMENT

The indictment, returned by a grand jury in the District of Connecticut on October 10, 1966, charges each of the three named defendants with two counts. Count one charges that on or about September 2, 1966, defendants transported from Milford, Connecticut, to Alpine, New Jersey, one John Joseph Grant, III, the kidnaped victim, who was harmed when liberated, in violation of 18 U.S.C. § 1201(a). Count two charges that on or about September 2, 1966 defendants transported a stolen motor vehicle from Milford, Connecticut, to New York City, in violation of 18 U.S.C. § 2312.[1]

[fol. 20] STATUTE

Count one of the indictment is founded upon 18 U.S.C. § 1201(a), which provides in pertinent part as follows:

> "Whoever knowingly transports in interstate . . . commerce, any person who has been unlawfully seized, . . . kidnaped, . . . or carried away and held for ransom or reward or otherwise, . . . *shall be punished (1) by death if the kidnaped person has not been liberated unharmed, and if the verdict of the*

[1] Although counsel for defendants Jackson and Walsh have filed motions "to dismiss the indictment", in neither their motions, briefs nor oral arguments have they challenged count two in any respect. Counsel for defendant De La Motte, although not having filed any motion or brief, at the hearing on the motions by the other defendants, generally adopted the arguments made by counsel for the other defendants.

jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed." (Emphasis added)

This statute creates an offense which calls for capital punishment upon recommendation of the jury, if proof of harm is introduced at the trial.[2] That the government intends to prove harm in the instant case is clearly indicated by the language of count one,[3] which charges that the kidnaped victim "was harmed when liberated". Imposition of the death penalty turns upon the jury's recommendation. Under the terms of the statute, the death penalty may be imposed *only* if the jury so recommends. On the other hand, a recommendation by the jury makes the death penalty *mandatory*.

[fol. 21] If defendants claim their fundamental Sixth Amendment right to trial by jury, therefore, they must risk their lives. That risk is at least substantially reduced if defendants waive their constitutional right to jury trial by claiming trial to the court[4] or by pleading guilty. In the event of a guilty plea, it has been suggested that imposition of the death penalty may be barred.[5] The exist-

---

[2] See *Smith* v. *United States*, 360 U.S. 1, 8-9 (1959).

[3] *COUNT ONE*

"On or about September 2, 1966, CHARLES JACKSON, also known as 'Batman', also known as 'Butch'; GLENN WALTER ALEXANDER DE LA MOTTE; and JOHN ALBERT WALSH, JR. the defendants herein, did knowingly transport in interstate commerce from Milford in the District of Connecticut to Alpine, New Jersey, one John Joseph Grant, III, a person who had theretofore been unlawfully seized, kidnapped, carried away and held by the defendants herein, for ransom and reward and for the purpose of aiding the said defendants to escape arrest, and the said John Joseph Grant, III, was harmed when liberated, in violation of Title 18, United States Code, Section 1201(a)."

[4] The Court need not determine, for purposes of the instant motions, whether defendants effectively may waive jury trial absent consent of the government and approval of the court. Rule 23(a), Fed. R. Crim. P. Cf. *Singer* v. *United States*, 380 U.S. 24, 34-38 (1965).

[5] *Waley* v. *United States*, 233 F.2d 804, 806 (9 Cir. 1956), *cert. denied*, 352 U.S. 896 (1956).

ence of discretionary power in the trial court, on the other hand, to submit the issue of punishment to a jury for its recommendation has been recognized in one Circuit.[6] But even if the trial court has the power to submit the issue of punishment to a jury, that power is discretionary, its exercise uncertain. If defendants waive jury trial or plead guilty, therefore, they may thus gain immunity from capital punishment; if they assert their constitutional right to jury trial, however, the price for assertion of such constitutional right is the risk of death.

[fol. 22] The Supreme Court of the United States recently reversed a state conviction of a capital offense because comment on the failure of the accused to testify had penalized and made costly the assertion of the Fifth Amendment right to silence.[7] Assertion of the equally fundamental right to trial by jury is made no less costly for these defendants by the very terms of the statute which defines the offense with which they are charged.

This Court therefore holds that 18 U.S.C. § 1201(a), to the extent that it impairs defendants' free exercise of their right to trial by jury, violates the Sixth Amendment to the Constitution of the United States and is invalid.

ORDER AND JUDGMENT

The Court having heard argument by counsel for the respective parties on defendants' motions to dismiss the indictment, having received and considered their briefs, the indictment and all other papers on file, and being of the opinion for the reasons set forth above that count one should be dismissed; it is therefore

ORDERED AND ADJUDGED as follows:

(1) Defendants' motions to dismiss count one of the indictment are granted and the said count is dismissed as against each defendant named therein.

---

[6] *Seadlund* v. *United States*, 97 F.2d 742, 748 (7 Cir. 1938).

[7] *Griffin* v. *California*, 380 U.S. 609, 614 (1965).

[fol. 23]

(2) Defendants' motions to dismiss count two of the indictment are denied.

(3) The effectiveness of this order and judgment and all other proceedings in this case, including proceedings against defendants under count two, are stayed for a period of thirty (30) days to permit the United States, if it is so advised, to appeal directly to the Supreme Court of the United States from this order and judgment pursuant to 18 U.S.C. § 3731.

(4) Orders of this Court now in effect with respect to bail and custody of defendants shall continue during the period of the stay provided for in paragraph (3) above.

(5) Jurisdiction of this Court is retained to extend, dissolve or modify the stay provided for in paragraph (3) above, subject to any superceding proceedings or orders of the Supreme Court.

Dated at New Haven, Connecticut, this 9th day of January, 1967.

/s/ William H. Timbers
Chief Judge

[fol. 24]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Criminal No. 11,829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

CHARLES JACKSON, also known as "Batman", also known as "Butch"; GLENN WALTER ALEXANDER DE LA MOTTE; and JOHN ALBERT WALSH, JR.

ORDER AMENDING PARAGRAPH (4) OF THE ORDER AND JUDGMENT OF THE DISTRICT COURT DATED JANUARY 9, 1967—March 22, 1967

The District Court by an Order and Judgment dated January 9, 1967 having granted defendants' motions to dismiss count one of the indictment, having denied defendants' motions to dismiss count two of the indictment, having stayed the effectiveness of said order and judgment for 30 days to permit the government to appeal directly to the Supreme Court, having directed that orders then in effect with respect to bail and custody of defendants should continue during the period of the 30 day stay and having retained jurisdiction to extend, dissolve or modify the stay, subject to any superseding proceedings or orders of the Supreme Court; and

The government on February 6, 1967 having filed a notice of appeal to the Supreme Court pursuant to 18 U.S.C. § 3731 from said Order and Judgment of the District Court; and

Each defendant in the meanwhile having separately moved to reduce bail or otherwise to modify the conditions of release; and

[fol. 25] The District Court having entered separate orders reducing the bail of each defendant and otherwise modifying the conditions of release; it is therefore

ORDERED that, confirming the separate orders heretofore entered reducing bail of each defendant, paragraph (4) of the Order and Judgment of the District Court dated January 9, 1967 be, and the same hereby is, amended with respect to each defendant to provides as follows:

(A) As to defendant Jackson—

(i) under Count 1 of the indictment, said defendant is admitted to bail on his own recognizance pending the prosecution and determination of the government's appeal to the Supreme Court from the said Order and Judgment dated January 9, 1967 (18 U.S.C. § 3731, ¶ 9);

(ii) under count 2 of the indictment, said defendant is admitted to bail upon his execution of an appearance bond in amount of $5,000, without surety, and upon his deposit in the registry of this Court of the sum of $500, such deposit to be returned upon the performance of the conditions of release; said defendant is restricted to the District of Connecticut and the City of New York as a condition of [fol. 26] his release; and said defendant is placed in the custody of Steven B. Duke, Esq., one of his attorneys, as a condition of his release (18 U.S.C. § 3146(a)(1)(2) and (3)).

(B) As to defendant De La Motte—

(i) under Count 1 of the indictment, said defendant is admitted to bail on his own recognizance pending the prosecution and determination of the government's appeal to the Supreme Court from the said Order and Judgment dated January 9, 1967 (18 U.S.C. § 371, ¶ 9);

(ii) said defendant is admitted to bail upon his posting a $5,000 appearance bond, with corporate surety, said bond having been posted January 31, 1967 (18 U.S.C. § 3146(a)(4)).

(C) As to defendant Walsh—

(i) under Count 1 of the indictment, said defendant is admitted to bail on his own recognizance pending the prosecution and determination of the government's appeal to the Supreme Court from the said Order and Judgment dated January 9, 1967 (18 U.S.C. § 3731, ¶ 9);

[fol. 27]

(ii) said defendant is admitted to bail upon his posting a $5,000 appearance bond, with John A. Walsh, Sr. as surety, and upon his deposit in the registry of this Court of the sum of $500, such deposit to be returned upon the performance of the conditions of release, said appearance bond having been posted and said deposit having been made in the registry of this Court on January 26, 1967 (18 U.S.C. § 3146(a)(3)).

and it is further

ORDERED that in all other respects the said Order and Judgment of the District Court dated January 9, 1967 be, and the same hereby is, confirmed; and it is further

ORDERED that the instant order amending paragraph (4) of the Order and Judgment of the District Court dated January 9, 1967 be, and the same hereby is, in all respects subject to any superseding proceedings or orders of the Supreme Court.

Dated at New Haven, Connecticut, this 22nd day of March, 1967.

/s/ William H. Timbers
Chief Judge

[fol. 28]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Criminal No. 11829

[File Endorsement Omitted]

UNITED STATES OF AMERICA

v.

CHARLES JACKSON, aka "BATMAN", aka "BUTCH"; GLENN WALTER ALEXANDER DE LA MOTTE; and JOHN ALBERT WALSH, JR.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 6, 1967

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of January 9, 1967, dismissing Count 1 of the indictment which charged the defendants Charles Jackson, Glenn Walter Alexander De La Motte and John Albert Walsh, Jr. with violating 18 U.S.C. 1201(a).

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include therein the following:

1. Transcript of docket entries
2. Indictment
3. Motions to dismiss the indictment
4. Memorandum of Defendant Charles Jackson in support of motion to dismiss indictment
5. Motions for Bills of Particulars
6. Government's Bills of Particulars
7. Memorandum of decision, order and judgment granting defendants' motion to dismiss count one of the indictment (filed January 9, 1967)
8. This notice of appeal

III. The following question is presented by this appeal:

Whether 18 U.S.C. 1201(a), the Federal Kidnapping [fol. 29] Act, is rendered invalid as impairing the constitutional right to trial by jury by providing for punishment by death "if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend."

Dated at Hartford, Connecticut, this 3rd day of February, 1967.

/s/ Jon O. Newman
United States Attorney
District of Connecticut

[Certificate of service omitted in printing]

[fol. 30]

[Clerk's certificate to foregoing transcript omitted in printing]

[fol. 31]

SUPREME COURT OF THE UNITED STATES

No. 1236, October Term, 1966

UNITED STATES, APPELLANT

v.

CHARLES JACKSON, ET AL.

APPEAL from the United States District Court for the District of Connecticut.

ORDER NOTING PROBABLE JURISDICTION—May 29, 1967

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 269528 18